

July 24, 2003

Mr. William J. Sinclair, Director  
Division of Radiation Control  
Department of Environmental Quality  
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RE: Division of Radiation Control Letter of June 30, 2003.

Dear Mr. Sinclair:

Thank you for your June 30, 2003, reply to my letter of May 13, 2003. Your letter addressed most, but not all of my questions.

You did not discuss the decision making process that was used by the Division of Radiation Control (DRC) when adopting the Nuclear Regulatory Commission "Interim Position and Guidance on the Use of Uranium Feed Material Other Than Natural Ores" and "Interim Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct material in Tailings Impoundments" <sup>1</sup> (Interim Guidances)

You did not specifically state whether the Radiation Control Board (RCB) was involved in the decision-making process and approved the use of the Interim Guidances by the DRC.

You did not specifically state whether the public was involved in the DRC's decision-making process regarding what guidance should be adopted by the DRC for non-conventional uranium milling and disposal activities.

You did not inform me of what State of Utah statutes or regulations apply to the adoption by the Utah Division of Environmental Quality of policies related to the health and safety of the public and the protection of the environment.

I would like you to address these questions.

Obviously, I believe that any State of Utah decision with respect what guidance should be used to review license amendment requests related to the processing of "feed material other than natural ore" and the disposal of non-11e.(2) byproduct material should be the result of a public decision-making process.

I should clarify what I mean by a public decision-making process. What I mean is 1) a notice to the public of the proposal by the Division of Radiation Control (including an announcement in the local newspaper) 2) an opportunity for public comment of at

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<sup>1</sup> NRC Regulatory Issue Summary 2000-23; Recent Changes to Uranium Policy (November 30, 2000).

least 30 days, 3) a public meeting, if requested, providing information and an opportunity for oral comment by the community or communities that will be most impacted by the proposal, 4) the establishment and use of a mailing list for interested persons (especially those who may not have computer access), and 5) a sincere attempt by the DRC to involve the public and **all** interested stakeholders, such as tribal entities and environmental groups.

This is similar to the decision-making process used by federal government and the State of Utah for rulemakings, including the recent Division of Radiation Control rulemaking associated with the amended Agreement State status. This is the decision-making process currently being used by the Department of Energy in the National Environmental Protection Act (NEPA) process for the Moab Mill Project.

The process used by the Division of Radiation Control to develop the Elements Paper (April 2000) did not make the grade as a public decision-making process in all aspects.

Now, it appears that the Division of Radiation Control has made a decision regarding what policy guidance to use with respect the processing of "feed material other than natural ore" and disposal of non-11e.(2) byproduct at licensed uranium or thorium mills without involving the public in that decision-making process. I strongly object to this turn of events.

I would like to refer you to the "Statement of Principles and Policy for the Agreement State Program; Policy Statement on Adequacy and Compatibility of Agreement State Programs" developed by the NRC (with Agreement State participation) and published in the Federal Register on September 3, 1997 (62 Fed. Reg. 46517-46525).

This NRC "Principles and Policy for the Agreement State Program," under Good Regulation Principles, states, in pertinent part:

The public should have an opportunity for early involvement in significant [Agreement State] regulatory program decisions. [Page 46519.]

The decision regarding what policy guidance to use for the processing of "material other than natural ore" and the disposal of non-11e.(2) byproduct material is a "significant regulatory program decision." The State of Utah did not provide an opportunity for the public to participate in that decision. The State of Utah did not conform to the expectations of the "Statement of Principles and Policy for the Agreement State Program." The Division of Radiation Control is not starting out on the right foot.

Therefore, I request that the Division of Radiation Control with the cooperation of the Radiation Control Board provide the public, through a notice and comment proceeding, with an opportunity to discuss and make comment upon the question of what policies should be used by the DRC when reviewing applications to process feed material

other than natural ore at licensed uranium and thorium mills and applications to dispose of non-11e.(2) byproduct material in the tailings impoundments.

Your June 30 letter indicates that the revisions to the final amended Agreement State application will include a statement that the DRC will follow the policy outlined in RIS 2000-23.

Therefore, I also request that the DRC not include such a statement in the final Agreement State amendment application until the State of Utah provides an opportunity for public participation in that decision.

I will submit a similar letter the Radiation Control Board that will address in more detail why the public and the Radiation Control Board should be given the opportunity to participate in this decision-making process before the fact, not after the fact.

Earlier this week I request an opportunity to address the Radiation Control Board at the August 1, 2003, meeting to discuss this matter. I have not received a reply to that request.

Thank you for your attention to this matter. If you have any questions regarding this request, please feel free to contact me.

Sincerely,

Sarah M. Fields  
P.O. Box 143  
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cc: (via electronic mail)  
Richard Graham, EPA Region VII  
Dennis Sollenberger, NRC OSTP  
Dianne Nielson, UT DEQ